HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No399 of 2004 (MS)

Pankaj Suri & others ..... Petitioners

Versus

Sri Ram Sharma ..... Respondent

Sri Pankaj Miglani, Advocate for the petitioner
Sri Arvind Vashisht, Advocate for the respondents.

Dated: 19.8.2004

Hon. Rajesh Tandon J.

Heard the learned counsel for the parties.

By the present writ petition the petitioner has prayed for a writ of certiorari quashing the order dated 5.5.2004, passed by the 1st Addl. District Judge, Hardwar, annexure-4 to the writ petition.

Briefly stated the facts giving rise to the present writ petition are that the respondent landlord filed an application under section 21 (1) (a) of U.P. Act No. XIII of 1972, on the ground that the shop in question is required for his son for running his own business. At the relevant time the shop in question was in occupation of Sri Jagannath Suri, deceased father of the petitioners. After the service of the notice Sri Jagannath Suri appeared before the Prescribed Authority and filed his written statement. On 31.3.2001 Prescribed Authority allowed the application of the landlord. Sri Jagannath Suri

preferred an appeal and during pendency of the appeal Sri Jagannath Suri expired on 11.4.2001 leaving behind the present petitioner as his heirs.

After the death of Sri Jagannath Suri, application was filed by the heirs for leading evidence in view of the death of Sri Jagannath Suri. Objections were field by the landlord. However, the Prescribed Authority has rejected the application, hence the present writ petition has been filed.

A perusal of the application filed by the petitioner shows that the petitioners wanted to lead evidence with regard to their bona fide need. Section 21 (1) (a) of the U.P. Act No. XIII of 1972 reads as under:

21. ***Proceedings for release of building under occupation of tenant- (1)*** *The prescribed authority may, on an application of the landlord in that behalf, order the eviction of a tenant from the building under tenancy or nay specified part thereof if it is satisfied that any of the following grounds exists namely-*

(a) that the building is bona fide required either in its existing form or after demolition and new construction by the landlord for occupation by himself or any member of his family, or nay person for whose benefit it is held of him, e3ither for residential purposes or for purposes of any profession, trade or calling, or where the landlord is the trustee of a public charitable trust, for the objects of the trust;

As will appear from the reading of Section 21 (1) (a) that bona fide need has to be seen with regard to the members of the family of landlord either in its existing form and after

demolition and new construction by the landlord. Proviso to Section 21(i)(a) provides for comparative hardship. It reads as under:

Provide also that the prescribed authority shall, except in cases provided for in the Explanation, take into account the likely hardship to the tenant form the grant of the application as against the likely hardship to the landlord from the refusal of the application and for that purpose shall have regard to such factors as may be prescribed.

So far as the residential accommodation is concerned factors have been provided under Rule 16(1). For the purposes of business. Rule 16 (2) of the Act contains the factors prescribed for consideration.

Since the comparative hardship has to be judged on the basis of existing evidence and pleadings of the parties, therefore, there is no need of adducing additional evidence. The appellate court shall consider the hardship in accordance with the proviso to section 21 (1)(a) along with the factors as contained under Rule 16 of U.P. Act No. XIII of 1972.

Subject to the aforesaid observation, the writ petition is dismissed. No order as to costs.

(Rajesh Tandon J.)

19.8.2004.

*Dhyani